

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TARA BLAGEC, Personal Representative of the  
Estate of KATELYN NICOLE BLAGEC, Deceased,

UNPUBLISHED  
May 28, 1999

Plaintiff-Appellant,

v

No. 206379  
Dickinson Circuit Court  
LC No. 94-008496 NH

CHARLES PAPP, D.O. and DICKINSON  
COUNTY MEMORIAL HOSPITAL,

Defendants-Appellees,

and

BEACON AMBULANCE SERVICE,

Defendant.

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Before: Whitbeck, P.J., and Markman and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right a jury verdict of no cause of action in favor of defendants, Dr. Charles Papp and Dickinson County Memorial Hospital, in this medical malpractice case.<sup>1</sup> We affirm.

This case concerns the tragic death of four-year-old Katelyn Blagec, who had a shunt placed in her brain shortly after she was born. At trial, testimony established that the child was brought to the emergency room at Dickinson County Memorial Hospital, where she was treated by Dr. Papp, who quickly made a diagnosis of shunt malfunction. Dr. Papp placed a telephone call to the child's neurosurgeons in Green Bay, Wisconsin and, following a return telephone call, immediately ordered a CAT scan and then reported the results back to the neurosurgeons. Approximately one-half hour later, the child was placed in an ambulance to be transported for further treatment to the neurosurgeons in Green Bay. While en route, the child went into respiratory arrest and died the following day.

One of the principal issues at trial concerned who made the decision to order the CAT scan, a procedure that caused delay in the child's transport to Green Bay, and which allegedly contributed to

her death. Although Dr. Papp claimed that he was directed to perform the procedure by Dr. Weinshel, one of the neurosurgeons in Green Bay, Dr. Weinshel denied doing so; plaintiff theorized that Dr. Papp made the decision to perform the procedure on his own.

On appeal, plaintiff first contends that the trial court erred in denying her motion for a new trial on the ground that the jury's verdict was against the great weight of the evidence. The trial court's decision on such a motion will not be reversed on appeal absent an abuse of discretion. MCR 2.611(A)(1)(e); *Rice v ISI Manufacturing, Inc.*, 207 Mich App 634, 637; 525 NW2d 533 (1994).

Here, the trial court did not abuse its discretion, in our judgment, in denying plaintiff's motion for a new trial. Although plaintiff presented evidence tending to indicate that Dr. Papp ordered the CAT scan on his own, delayed in reporting the results, and failed to have an ambulance ready in a timely manner to transport the child, defendants presented conflicting evidence on each of these issues, as well as testimony that Dr. Papp complied with the standards of care for an emergency room physician. The jury was entitled to believe the witnesses that it found credible. *Rossien v Berry*, 305 Mich 693, 701; 9 NW2d 895 (1943). Viewing the record as a whole, we cannot agree that the jury's verdict was contrary to the great weight of the evidence.

Concerning responsibility for the CAT scan, aside from Dr. Papp's own testimony that he was ordered by Dr. Weinshel's office to get a CAT scan and report back with the results, the child's mother also testified that Dr. Papp told her at the time that he had been ordered by Green Bay to proceed with the CAT scan. Moreover, while Dr. Weinshel denied giving such orders, he also admitted that he would have recommended taking a CAT scan in a situation such as that presented that day. Based on this evidence, the jury could reasonably have concluded that Dr. Papp was merely following orders to perform the CAT scan.

Concerning alleged delays on Dr. Papp's part, again there was evidence from which the jury could have found that a timely report of the CAT scan results had been made. Plaintiff focuses on the fact that there was approximately a one-half hour delay before notifying Dr. Weinshel's office of the results. However, Dr. Papp testified that, once the patient was returned to the emergency department from the CAT scan department, he went down to radiology to view the films with the radiologist, who looked at the pictures, took measurements, and looked to see whether there were other problems going on in the brain. Dr. Papp testified that, prior to making the call back to Dr. Weinshel's office, it was necessary to assess the child's condition, so this could be reported as well. Dr. Papp testified that he did not delay his call to Dr. Weinshel, and that any delay was due to gathering all the information needed to report back. Defendant's expert also testified that the reporting back of the results of the CAT scan complied with the standard of care of an emergency room doctor. From this testimony, the jury could have concluded that there was no undue delay in reporting the results back to Dr. Weinshel's office.

Finally, the jury could have found that Dr. Papp made reasonable efforts to ensure that an ambulance was available in a timely matter. The ambulance was called at 9:26 a.m. and instructed to arrive by about 10:00 a.m. Dr. Papp had estimated the time for the CAT scan at one hour, and estimated that the child would not be ready to depart until this time. Defendant's expert testified that

this notification to the ambulance company was reasonable and Dr. Papp testified that it was his intent to transfer the patient as quickly as he could.

Plaintiff also contends that the trial court erred in its evidentiary rulings, thereby depriving her of a fair trial. A trial court's decision whether to admit or exclude evidence is reviewed for an abuse of discretion. *Poirier v Grand Blanc Twp (After Remand)*, 192 Mich App 539, 546; 481 NW2d 762 (1992). We find no abuse of discretion here in the trial court's evidentiary rulings.

First, the trial court did not abuse its discretion in admitting Dr. Weinshel's testimony concerning whether *he* would have recommended a CAT scan under the circumstances presented. Contrary to plaintiff's argument, the testimony was not speculative where Dr. Weinshel had reviewed Dr. Papp's deposition testimony and the child's medical records, and gave no indication that he needed additional information in order to render an informed opinion. Moreover, the testimony was relevant in light of the dispute over whether Dr. Papp had been directed by Dr. Weinshel to perform the CAT scan. While the testimony may have tangentially touched on the 'standard of care' issue, it is also necessary to look at the context in which it was given. Defendants' theory was that Dr. Papp was directed by Dr. Weinshel to order the CAT scan. Immediately before the testimony in question, defendant attempted to establish this fact by questioning the witness about the telephone call between Dr. Papp and Dr. Weinshel's nurse as it related to the CAT scan. Clearly, the testimony here goes to the main disputed issue in the case, *to wit*, who in fact ordered the CAT scan procedure. Dr. Weinshel's testimony that it would be something that he would recommend under the circumstances made it more probable that Dr. Papp's theory was true.

Finally, we are not persuaded that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, MRE 403, particularly in light of the trial court's limiting instruction explaining that the issue in the case was the standard of care for an emergency room doctor, but that Dr. Weinshel was not an emergency room doctor. The trial court also explained that the standard of care for a neurosurgeon was not at issue in this case.

Plaintiff also contends that the trial court erred in excluding a portion of Dr. Weinshel's testimony concerning his criticism of the timing of various events occurring in the emergency room. While reasonable minds perhaps can disagree on the propriety of this determination, we cannot conclude that the trial court abused its discretion in this regard, considering that Dr. Weinshel admittedly was unfamiliar with the applicable standard of care for emergency room physicians. While he was critical of the timing of what occurred, he also qualified this criticism by asserting that he didn't know what was involved "up there" and that he had never worked in a small hospital emergency room.

Finally, plaintiff contends that the trial court erred in admitting a portion of Dr. Canady's testimony. Contrary to what plaintiff argues, the testimony did not involve a comment on the applicable standard of care for an emergency room physician. Indeed, Dr. Canady specifically disclaimed any knowledge on this particular issue. Dr. Canady made it clear that her testimony simply addressed the management of the child from the perspective of a neurosurgeon. There was little likelihood that the jury was confused by the testimony considering the trial court's repeated cautionary instructions concerning the applicable standard of care.

Affirmed.

/s/ William C. Whitbeck

/s/ Stephen J. Markman

/s/ Peter D. O'Connell

<sup>1</sup> Defendant-hospital's liability was predicated on an agency theory.